It would be dangerous to attempt to formulate the kind of evidence which can be regarded as sufficient. This must depend on the facts of each particular case. It is for the trial court to consider and decide for itself whether the evidence by the party giving the loans has sufficiently rebutted the presumption as in the case of *Baju Ria* v. *Liau Kim Lian.*(2) In the consideration of such evidence for the purpose of section 3 system and continuity would hardly be relevant. They would be if it falls on the borrower to prove positively that the party lending the money is a moneylender for the purpose of section 2.

**Azmi L.P.:** I concur. The appeal is therefore allowed with costs. It is further ordered that the discharge of the charge be signed by the respondent within one week from the date of the service of this order on him, failing which the assistant registrar of the High Court at Seremban be authorised to sign the discharge of the charge for the respondent.

That the memorial of the said charge be cancelled both on the original document of title with the registrar and also on the issue document of title relating to the charge.

That the issue document of title now in the possession of the respondent be returned to the appellant.

The deposit of $500 be returned to the appellant.

*Appeal allowed.*

Solicitors: *Joseph & Son; Atma Singh Gill & Co.*

---

## LIONEL v. GOVERNMENT OF MALAYSIA

**[F.C. (Ong C.J. (Malaya), Gill & Ali F.JJ.) July 9, 1971]**

**[Johore Bahru — Federal Court Civil Appeal No. 3 of 1971]**

*Administrative Law — Declaration — Public Servant — Dismissal of by Chief Police Officer after disciplinary action under General Orders, chapter D, reg. 32, for acts of alleged indiscipline — No delegation of powers by Public Services Commission — Whether dismissal void.*

*Constitutional Law — Civil Service — Dismissal — Protection of civil servants — Federal Constitution, arts. 4, 135, 139(1), 144(6), 160(1), Part X.*

In 1953 the appellant was appointed as a temporary clerk-interpreter in the Kelantan Police Contingent. In 1958 he was transferred to Contingent Police Headquarters in Johore Bahru. In 1962 disciplinary action was taken against him by the Chief Police Officer, Johore, under regulation 32 of the General Orders, Chapter D, for acts of alleged indiscipline. His explanations were not accepted and by letter dated May 29, 1962, the Chief Police Officer informed him, in effect, that he had failed to exculpate himself and that it had been decided to terminate his services as a temporary clerk. The appellant appealed to the Public Services Commission for reconsideration of his case but his appeal was dismissed. He therefore sought a declaration that his purported dismissal by the Chief Police Officer was void, inoperative and of no effect.

**Held,** allowing the appeal: the authority which had power to dismiss the appellant was the Public Services Commission who had not delegated the power and the act of the Chief Police Officer in this case was clearly contrary to the Constitution and therefore void.

*Case referred to:-*

(1) *Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] M.L.J. 169, 171-172.

FEDERAL COURT.

*P. K. Nathan* for the appellant.

*Ajaib Singh* (Senior Federal Counsel) for the respondent.

*Cur. Adv. Vult.*

**Ong C.J. (Malaya):** The facts of this case are not in dispute. On October 1, 1953 the appellant was appointed as temporary clerk-interpreter in the Kelantan Police Contingent, subject to probation for a period of 6 months. He was liable, as long as he remained in the Public Service, to be employed in any part of the Federation of Malaya. In 1958 he was transferred to Contingent Police Headquarters in Johore Bahru. On April 30, 1962 disciplinary action under regulation 32 of General Orders, Chapter D, was taken against him by the Chief Police Officer, Johore, for acts of alleged indiscipline. He was informed of the charges by letter which required him to exculpate himself within 14 days His explanations were not accepted by the Chief Police Officer who on May 29, 1962 conveyed his decision to the appellant in these terms: —

"With reference to my letter to you (SR) PF/3596 dated 30th April, 1962, and to your reply thereto dated 8th May, 1962, I have to inform you that, after careful consideration of your representations, I have decided that you have failed to exculpate yourself.

2. I have, therefore, decided to terminate your services as a Temporary Clerk with effect from 1st June, 1962, on payment to you of one month's salarly plus cost of living allowance in lieu of notice."

On June 10, 1962 the appellant wrote to the Public Services Commission appealing for reconsideration of his case with a view to reinstatement. His appeal was dismissed. On March 12, 1966 he commenced action, seeking a declaration that his purported dismissal by the Chief Police Officer on June 1. 1962 was void, inoperative and of no effect and that he continued to be a member of the police clerical service, entitled to all emoluments accrued since the date of his dismissal.

The appellant's case was that, as a member of the public service, his purported dismissal by the Chief Police Officer, an authority subordinate in rank to the Public Services Commission, was contrary to clause (1) of article 135 of the Constitution. The Government in its defence admitted that the appellant was a member of the police clerical service, but pleaded that one of the terms of his employment was that his services were terminable by one month's notice, or on payment of one month's salary in lieu of notice, and his services were merely terminated in accordance therewith.

The learned trial judge was of opinion that, by reason of the letter of the Chief Police Officer having expressly stated that the appellant's services were terminated and also the payment to him of one month's salary plus cost of living allowance, the Chief Police Officer's decision was taken probably to save him from the ignominy of a dismissal and in accordance with the conditions of his appointment which he had agreed

to on accepting such appointment. With respect I think it only right to say that the wording of the Chief Police Officer's letter should not be the deciding factor. Calling a spade a pickaxe does not alter the character of that agricultural implement. Even in the same letter it was stated that the decision taken was because the appellant had failed to exculpate himself.

Assuming, however, that the appellant had been dismissed, the trial judge went on to consider whether the Chief Police Officer was exercising powers delegated to him by the Public Services Commission by virtue of the provisions of clause (6) of article 144 of the Constitution which reads: —

"(6) A Commission to which this Part applies may delegate to any officer in a service to which its jurisdiction extends, or to any board of such officers appointed by it, any of its functions under Clause (1) in respect of any grade of service, and that officer or board shall exercise those functions under the direction and the control of the Commission."

In taking the affirmative view the trial judge was of opinion that the appeal made to the Public Services Commission indicated that the Public Services Commission "was exercising direction and control over the Chief Police Officer in performing the functions which had been delegated to him, within the terms of clause (6) of article 144 of the Constitution." Again, with respect, I must voice my dissent. Having the power to delegate does not necessarily imply that, in any particular case, the Public Services Commission must have delegated its powers to the person professing to exercise such powers. Whether or not the Chief Police Officer was exercising powers delegated to him by the Public Services Commission was a question of fact. It was not pleaded in the defence, much less proved.

Article 139(1) of the Constitution provides for "a Public Services Commission whose jurisdiction shall, subject to article 144 extend *to all persons* who are members of the services mentioned in paragraphs (c) and (f) of clause (1) of article 132 . . . " The appellant was undoubtedly a member of the general public service of the Federation, under paragraph (c).

Clause (1) of article 135 reads: —

"(1) No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank."

Article 160(1) applies the Interpretation and General Clauses Ordinance 1948 to the interpretation of the Constitution. Section 29 of the Ordinance states that "where a written law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss . . . " At the date of the appellant's dismissal the authority which could have appointed him was the Public Services Commission, which, therefore, was the authority having power to dismiss — not the Chief Police Officer who was subordinate to the Public Services Commission. Not having been delegated the power of dismissal generally or in this particular case, the Chief Police Officer's act was clearly contrary to the Constitution and therefore void: see *S. S. Kanda* v. *Government of the Federation of Malaya*.[1] That the appellant, when accepting appointment in 1953 had expressly agreed to accept one month's notice of termination of his services, is no more an answer to his claim than it was to Inspector Kanda. A public servant is guaranteed security of tenure of his office under Part X of the Constitution, which is the supreme law: see article 4. Just as it is impossible to contract out of the provisions of rent control legislation, *a fortiori* must the terms of the appellant's appointment (including regulation 36 of General Orders, Chapter D) be invalid where it is inconsistent with the Constitution.

The appeal is accordingly allowed and there will be judgment for the appellant as prayed, with costs here and in the court below. His deposit is to be refunded to him.

**Gill** and **Ali F.JJ.** concurred.

*Appeal allowed.*

Solicitors: *Nathan & Yang.*

---

## MALAYSIA GALVANISED IRON PIPES SDN. BHD. v. METAL INDUSTRY EMPLOYEES' UNION & ORS.

**[F.C. (Ong C.J. (Malaya), Gill & Ali F.JJ.) July 9, 1971]**

**[Kuala Lumpur — Federal Court Civil Appeal No. 26 of 1971]**

*Industrial Law — Picketing — Whether prohibited — Grant of temporary injunction — Discretion of judge — Trade Unions Ordinance, 1959, ss. 21 & 22 — Industrial Relations Act, 1967, ss. 16A & 41(b).*

The appellants had retrenched 18 of their employees and by way of retaliation the retrenched employees erected a temporary shed in front of the appellants' premises and used it for purposes of picketing. The appellants took out a writ against the respondents and applied for an injunction to restrain the employees from obstructing the appellants and this was granted. Subsequently the respondents applied to have the *ex parte* order set aside. Abdul Hamid J. granted the respondents' application and set aside the *ex parte* order. The appellants appealed.

**Held,** dismissing the appeal: (1) section 41(b) of the Industrial Relations Act, 1967 did not apply to the picketing in this case;

(2) the refusal to grant the temporary injunction was in the exercise of a judicial discretion and it had not been shown that it was against any established principle and it cannot be interfered with.

FEDERAL COURT.

*S. Kulasegaran* for the appellants.

*G. Joseph* for the respondents.

*Cur. Adv. Vult.*

**Ali F.J.:** This appeal involves the consideration of the Industrial Relations Act, 1967 and the Trade Unions Ordinance, 1959.

The background to this appeal can be stated in a few words. The appellants, a limited company, retrenched 18 of their employees for reasons which do not require consideration here. By way of retaliation the retrenched employees erected a temporary shed 6'x6' in front of the appellant company's premises and used it for purposes which are causing annoyance or inconvenience to the company. According to one